

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PAUL HUPP,	)	Civil No. 12cv0492 GPC(RBB)
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
	)	<b>(1) DENYING PLAINTIFF'S EX</b>
	)	<b>PARTE MOTION FOR</b>
	)	<b>RECONSIDERATION [ECF NO. 261];</b>
v.	)	
	)	<b>AND</b>
	)	
	)	<b>(2) DISCHARGING ORDER TO SHOW</b>
	)	<b>CAUSE [ECF NO. 256]</b>
SAN DIEGO COUNTY, SAN DIEGO	)	
POLICE DEPARTMENT, et al.,	)	
	)	
Defendants.	)	
	)	

Plaintiff Paul Hupp, proceeding pro se, brought this action pursuant to 42 U.S.C. § 1983 on February 28, 2012. (Compl. 1, ECF No. 1.) The parties are familiar with the facts of the case, and the Court describes the allegations in broad strokes.<sup>1</sup> Hupp's action arises from his contempt of court charges and conviction in San Diego Superior Court in 2011. (See Third Am. Compl. 4-5, 7-8,

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<sup>1</sup> A more detailed recitation of the factual and procedural history is available in the Court's June 3, 2014 Order Denying Motion to Compel Discovery [ECF No. 259].

1 ECF No. 64.) On May 6, 2014, the Court held a settlement  
2 conference in this case and issued an Order to Show Cause for  
3 Plaintiff's failure to appear [ECF No. 256]. On May 19, 2014,  
4 Plaintiff filed his response to the Court's Order to Show Cause  
5 [ECF No. 258]. Pending before the Court is Plaintiff's Ex Parte  
6 Motion for Reconsideration of the Court's June 3, 2014 discovery  
7 Order [ECF No. 261]. For the following reasons, the Court DENIES  
8 Plaintiff's Motion for Reconsideration. The Order to Show Cause  
9 issued for Plaintiff's failure to participate in the settlement  
10 conference is discharged.

## 11 I. DISCUSSION

### 12 A. Plaintiff's Motion for Reconsideration

13 On June 9, 2014, the Court received a document titled "Rep[l]y  
14 to Magistrate Brooks June 3, 2014 'Order' Denying Plaintiff's  
15 Motion to Compel Discovery From San Diego County, James Patrick  
16 Romo and Peter Myers [ECF 154] and Request for Reconsideration"  
17 [ECF No. 261]. The Court treats this request as Plaintiff's Motion  
18 for Reconsideration of the Court's discovery ruling.

19 Motions for reconsideration are generally treated as motions  
20 to alter or amend the judgment under Federal Rules of Civil  
21 Procedure 59(e). See In re Agric. Research & Tech. Grp., Inc., 916  
22 F.2d 528, 542 (9th Cir. 1990); MGIC Indem. Corp. v. Weisman, 803  
23 F.2d 500, 505 (9th Cir. 1986). Generally, there are four basic  
24 grounds for a Rule 59(e) motion: 1) the movant may demonstrate  
25 that the motion is necessary to correct manifest errors of law or  
26 fact upon which the judgment is based; 2) the motion may be granted  
27 so that the moving party may present newly discovered or previously  
28 unavailable evidence; 3) the motion will be granted if necessary to

1 prevent manifest injustice, such as serious misconduct by counsel;  
2 and 4) a motion may be justified by an intervening change in  
3 controlling law. 11 Charles Alan Wright & Arthur R. Miller,  
4 Federal Practice & Procedure § 2810.1 (3d ed. 1998) (citations  
5 omitted).

6 Alternatively, a court can construe a motion to reconsider as  
7 a motion for relief from a judgment or order under Federal Rule of  
8 Civil Procedure 60. Under Rule 60, a party can obtain relief from  
9 a court order for the following reasons: (1) mistake,  
10 inadvertence, surprise, or excusable neglect; (2) newly discovered  
11 evidence which by due diligence could not have been discovered in  
12 time to move for a new trial under Rule 59(b); (3) fraud; (4) the  
13 judgment is void; (5) the judgment has been satisfied; (6) any  
14 other reason justifying relief from the operation of the judgment.  
15 Fed. R. Civ. P. 60(b).

16 Motions to reconsider are appropriate only in rare  
17 circumstances to correct manifest errors of law or fact or to  
18 present newly discovered evidence. See School Dist. No. 1J,  
19 Multnomah Cnty., Oregon v. AcandS Inc., 5 F.3d 1255, 1263 (9th Cir.  
20 1993). A motion for reconsideration should not be used to ask a  
21 court "to rethink what the court had already thought through-  
22 -rightly or wrongly." Above the Belt, Inc. v. Mel Bohannan  
23 Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983). Arguments that a  
24 court was in error on the issues it considered should be directed  
25 to the court of appeals. See Refrigeration Sales Co. v.  
26 Mitchell-Jackson, Inc., 605 F. Supp. 6, 7 (N.D. Ill. 1983).

27 The Court's local rules outline the requirements for seeking  
28 reconsideration of an order.

[I]t will be the continuing duty of each party and attorney seeking such relief to present to the judge to whom any subsequent application is made an affidavit of a party or witness or certified statement of an attorney setting forth the material facts and circumstances surrounding each prior application, including inter alia: (1) when and to what judge the application was made, (2) what ruling or decision or order was made thereon, and (3) what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application.

S.D. Cal. Civ. R. 7.1 (i)(1). The application for reconsideration must be filed within twenty-eight days after the entry of the order sought to be reconsidered. Id. 7.1(i)(2).

Plaintiff's June 9, 2014 submission is timely; however, it fails to meet the criteria for reconsideration. See In re Agric. Research & Tech. Grp., Inc., 916 F.2d 533, 542 (9th Cir. 1990) (reviewing denial of motion for reconsideration for abuse of discretion and stating that "reconsideration may properly be denied where the motion fails to state new law or facts"). Additionally, it was filed on an ex parte basis and not in compliance with the Local Rule 7.1(b), despite the fact that the pro se Plaintiff had previously obtained hearing dates for prior motions from this Court.

Hupp's chief complaint appears to be not the denial of his discovery motion, but the grant of substantive motions in favor of Defendants before the completion of discovery.<sup>2</sup> (Pl.'s Mot. Recons. 2-3, ECF No. 261.) The fact that discovery is still open does not preclude a district court from resolving a summary judgment motion when the record is adequate. See, e.g., Dulany v. Carnahan, 132 F.3d 1234, 1238-39 (8th Cir. 1997); Fla. Power &

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<sup>2</sup> Plaintiff acknowledges that the motions for summary judgment were not before this Court. (Id. at 2 n.1.)

1 Light Co. v. Allis Chalmers Corp., 893 F.2d 1313, 1316 (11th Cir.  
2 1990) (“[I]t would be inappropriate to limit summary judgment to  
3 cases where discovery is complete in light of the valuable role  
4 served by summary judgment and the commitment of discovery issues  
5 to the sound discretion of the trial judge.”) (citation and  
6 internal quotation marks omitted).

7 Plaintiff’s Motion to Compel Discovery on San Diego County,  
8 James Patrick Romo and Peter Myers [ECF No. 154] was accompanied by  
9 numerous exhibits and totaled 113 pages. Hupp propounded fourteen<sup>3</sup>  
10 interrogatories, six requests for production, and six requests for  
11 admission on Defendant Romo. (Pl.’s Mot. Compel Mem. P. & A. Exs.  
12 1a, 1b, & 1c, at 15-35, ECF No. 154.) He also served six requests  
13 for production on Myers, and six requests for production on the  
14 County. (Id. Exs. 1d, 1e, at 36-48.) Defendants’ objections to  
15 these requests were largely based on relevance; in the Motion to  
16 Compel, Hupp asserted his need for discovery but failed to explain  
17 how the information he sought related to any of his claims. In his  
18 Motion for Reconsideration, Plaintiff reiterates the same  
19 conclusory arguments.

20 Hupp takes issue with the Court’s denial of his request for  
21 production of items listed in document request number two to the  
22 County; Plaintiff alleges that the Order “fails to elaborate or  
23 explain [the Court’s] ruling in any manner whatsoever.” (Pl.’s  
24 Mot. Recons. 4, ECF No. 261.) In his document request, Hupp sought  
25 “[a]ny and all documents that comprise of, or are part of, ROMO’s  
26 personnel file, including the disciplinary record and any other  
27 documents concerning ROMO’s hiring, training, duties, performance,

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28 <sup>3</sup> Many interrogatories included multiple sub-parts.

1 assignments and mental and physical condition." (Pl.'s Mot. Compel  
2 Mem. P. & A. Ex. 1e, at 46, ECF No. 154.) The Court discussed this  
3 request and Defendant's objections, and concluded that the request  
4 did not relate to any claim or defense pending in the case.

5 "[A]fter Defendant Romo's dismissal from the case, any information  
6 Plaintiff expects to acquire from Romo's personnel file does not  
7 appear to be germane to the remaining claims." (Order Den. Mot.  
8 Compel 12, ECF No. 259.)

9 Plaintiff also complains of the Court's denial of discovery  
10 related to his earlier state criminal case, arguing that the basis  
11 and issues in this case involve his state civil contempt case.  
12 (Pl.'s Mot. Recons. 5, ECF No. 261.) Plaintiff sought documents  
13 from Defendant San Diego County related to both his civil contempt  
14 case, San Diego Superior Court Case Number  
15 37-2010-00102264-CU-HR-CTL, and his criminal case, San Diego  
16 Superior Court Case Number SCD238651. This Court noted that  
17 because Hupp's state criminal case is ongoing and the federal claim  
18 related to it was stayed by Judge Curiel, Plaintiff could not  
19 propound discovery on that claim. (Order Den. Mot. Compel 10, ECF  
20 No. 259.) Plaintiff does not present any new facts or argument to  
21 justify reconsideration of this ruling. Indeed, Hupp states that  
22 his criminal proceedings are not "at issue here." (Pl.'s Mot.  
23 Recons. 5, ECF No. 261.)

24 Hupp's civil contempt case was prosecuted by the Office of the  
25 Attorney General of California. (Order Den. Mot. Compel 9, ECF No.  
26 259.) Although Plaintiff contends that his federal civil rights  
27 claims arise out of his state civil contempt case, he fails to  
28 explain why his request for documents related to that case was

1 properly addressed to Defendant County. The Court denied the  
2 request for documents because Plaintiff could not demonstrate that  
3 the responding party, Defendant County, had the requisite control  
4 over the documents. (Id.) Plaintiff's Motion for Reconsideration  
5 fails to offer any new facts to suggest the denial was in error.

6 Plaintiff complains that the Court denied his document request  
7 three, which sought, inter alia, documents related to complaints  
8 about investigator Schmidt. (Pl.'s Mot. Recons. 4, ECF No. 261.)  
9 Hupp acknowledges that Schmidt was not a party to the case, but  
10 Plaintiff argues that he should have been allowed to add Schmidt as  
11 a defendant. Judge Curiel denied Hupp's request to add Schmidt as  
12 a party. (Order Den. Pl.'s Mot. Extension 3, ECF No. 148)  
13 ("Plaintiff may not file a fourth amended complaint to add Roe  
14 Defendant Dan Schmidt.") Plaintiff has not shown a basis for  
15 reconsideration of the ruling as to this document request.

16 Hupp objects to the Court's denial of his motion for  
17 production as to document request number five to Defendant County.  
18 (Pl.'s Mot. Recons. 4, ECF No. 261.) Plaintiff states that the  
19 Court issued the same ruling earlier "without giving Plaintiff a  
20 chance to be heard" and that Hupp "will not allow it to go  
21 unopposed a second time here." (Id. n.3.)

22 Hupp's document request five sought any written communications  
23 between Freedom Communications Inc., Michael Bishop, Richard and  
24 Judith Beyl, any federal court, any federal law enforcement agency,  
25 any state law enforcement agency and any local law enforcement  
26 agency. (Pl.'s Mot. Compel Mem. P. & A. Ex. 1e, at 48, ECF No.  
27 154.) Plaintiff previously sought to compel the same discovery  
28 from Defendant City of San Diego. (See Pl.'s Mot. Compel Attach.

1 #1 mem. P. & A. 26, ECF No. 152.) The Court denied these requests  
2 as unrelated to the current litigation, noting that the entity and  
3 individuals named in them were defendants in other civil cases  
4 initiated by Hupp. (Order Den. Mot. Compel 17, ECF No. 259; Order  
5 Granting & Den. Mot. Compel 25 & n.9, ECF No. 251.) Plaintiff did  
6 not move for reconsideration of the Court's previous ruling, which  
7 denied this request directed to Defendant City of San Diego. He  
8 also did not file an objection to the Court's discovery decision  
9 pursuant to the Federal Rule of Civil Procedure 72(a). The  
10 rationale for denying the request served on the City of San Diego  
11 is the same for denying the request to the County of San Diego. A  
12 basis for reconsideration has not been shown.

13 Plaintiff asserts that the Court has "independently taken  
14 evidence." (Pl.'s Mot. Recons. 5, ECF No. 261.) But courts may  
15 take judicial notice of court records. See Fed. R. Evid. 201(b);  
16 Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal.  
17 1978), *aff'd*, 645 F.2d 699 (9th Cir. 1981); 9A Charles Alan Wright  
18 & Arthur R. Miller, Federal Practice & Procedure § 2409 (3d ed.  
19 1998) ("[T]he power of a court to take judicial notice of its own  
20 records amply was established by a multitude of cases."). A court  
21 could also take judicial notice of the records of the proceedings  
22 in other courts, both within and without the federal judicial  
23 system. See St. Paul Fire & Marine Ins. Co. v. Cunningham, 257  
24 F.2d 731, 732 (9th Cir. 1958) (taking judicial notice of items  
25 appearing in the records of the Superior Court of Mendocino County  
26 and the District Court of Appeal); 9A Charles Alan Wright & Arthur  
27 R. Miller, Federal Practice & Procedure § 2409. In any event,  
28 Plaintiff does not dispute that the cases cited by the Court were



1 initiated by him against the entity and individuals he named in  
2 document request five served on Defendant San Diego County.

3 The facts and circumstances surrounding Plaintiff's claims  
4 have not changed since this Court's Order denying his Motion to  
5 Compel against Defendants San Diego County, James Romo, and Peter  
6 Myers. No new facts were discovered since the Court's disposition  
7 of the discovery motion. Accordingly, the request for  
8 reconsideration is DENIED.

9 Plaintiff's Motion for Reconsideration also addresses  
10 Plaintiff's failure to attend the May 6, 2014 settlement conference  
11 in this case. (Pl.'s Mot. Recons. 4-5, ECF No. 261.) The Court  
12 turns to that issue.

13 **B. Order to Show Cause**

14 On March 8, 2013, the Court held an early neutral evaluation  
15 in this case. Plaintiff appeared telephonically at the conference.  
16 (Mins., Mar. 8, 2013, ECF No. 117.) Following the conference, the  
17 Court issued a case management order setting a further settlement  
18 conference for October 8, 2013 [ECF No. 118]. On September 27,  
19 2013, the Court reset the conference for November 15, 2013 [ECF No.  
20 162]. Plaintiff sought leave to appear telephonically at the  
21 conference due to a schedule conflict and because the conditions of  
22 his criminal probation did not allow him to leave Riverside County  
23 [ECF No. 187]. The Court granted the request, and Plaintiff  
24 appeared telephonically on November 15, 2013. (Mins., Nov. 15,  
25 2013, ECF No. 200.)

26 The Court scheduled a further mandatory in-person settlement  
27 conference for May 6, 2014. (Id.) Plaintiff did not seek leave to  
28 appear telephonically at the conference. At the time and date set

1 for the settlement conference, Plaintiff failed to appear.  
2 Consequently, the Order to Show Cause for Plaintiff's failure to  
3 attend was issued [ECF No. 256].

4 Plaintiff's response to the Court's Order to Show Cause states  
5 that he had no knowledge of the May 6, 2014 mandatory settlement  
6 conference because he never received notice from the Court. (Pl.'s  
7 Reply Judge Brooks['] May 6, 2014 Mins. 2-3, ECF No. 258.) Hupp  
8 claims that he was not provided notice of "numerous" other court  
9 orders in the past. (Id. at 3 n.2.) Plaintiff acknowledges that  
10 he received the Court's voicemail message asking him to contact the  
11 Court. He claims, however, that he did not receive it until 6 p.m.  
12 that night. (Id. at 2.) Plaintiff acknowledges the next  
13 settlement conference date set for September 5, 2014, and requests  
14 to appear telephonically. (Id. at 3.)

15 Defendants did not file any reply to the Order to Show Cause.  
16 Considering Plaintiff's pro se status and that he may not have  
17 received the November 15, 2013 minutes setting the May 6, 2014  
18 mandatory settlement conference, the Order to Show Cause is  
19 discharged. Hupp's request to appear telephonically is denied  
20 without prejudice. Plaintiff may resubmit his request closer to  
21 the scheduled date for the conference and may seek to appear by  
22 telephone based on then-existing facts.

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II. CONCLUSION

For the reasons stated above, the Court DENIES Plaintiff's Motion for Reconsideration [ECF No. 261]. The Order to Show Cause [ECF No. 256] is discharged.

IT IS SO ORDERED.

Dated: June 24, 2014

  
Ruben B. Brooks  
United States Magistrate Judge

cc: Judge Curiel  
All Parties of Record